IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

LA.App..No. 1139 of 2002(Y) & CO 24/2003

LAR.80/1991 of SUB COURT,KOTTARAKKARA
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APPELLANT: RESPONDENT

STATE OF KERALA

BY GOVERNMENT PLEADER SMT.K.R.DEEPA.

RESPONDENTS: CLAIMANT

P.THANKAMANI AMMA, VILAYIL PUTHEN
VEEDU, MUTHANA P.O., PALAYAMKUNNU, ATTINGAL,
CHIRAYINKEEZHU FROM THEKKE ILAMBILA PUTHEN VEEDU,
CHADAYAMANGALAM VILLAGE AND MURI,
KOTARAKKARA TALUK.

BY ADV. SRI.T.K.MARTHANDAN UNNITHAN
SRI.V.JAYAKUMAR
SRI.K.P.UNNIKRISHNAN

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, ALONG WITH CO NO. 24 OF 2003 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. NO.1139 OF 2002 & Cross Objection 24/03

Dated 11th October, 2007.

J U D G M E N T

Kurian Joseph, J.

This appeal is directed against the judgment and decree in LAR 80/91 on the file of the Sub Court, Kottarakkara. The purpose of acquisition originally was construction of a mini-civil station. It is not in dispute that later the property was handed over to KSRTC for bus stand at Chadayamangalam. In view of the factual position as above and evidence available on record, there is no serious dispute that the property is situated in an important locality. According to the claimant, it is in the heart of Chadayamangalam town. Be that as it may, the Land Acquisition Officer fixed the land value at Rs.731/- per Are. Section 4(1) notification was issued on 29.10.1988. The reference court has noted that apart from producing the files pertaining to the acquisition, no attempt was made by the respondent to substantiate as to how the land value was fixed at Rs.731/- per Are. Thus the fixation on the basis of the basic document was not proved as just and proper. It is seen that curiously the claimant did not have any documentary evidence.

She was examined as AW1. Though an Advocate Commissioner was deputed and Ext.C1 commission report, Ext.C1(a) mahazar etc. have been prepared, it is seen that the same is of the year 1999, by which time, the whole face of the place had changed. The claimant had a case for fixation at the rate of Rs.10,000/- per cent. Taking note of the importance of the locality and also the fact that the acquired property was wet land lying at a low level from the road, though situated in a commercially important locality, in the light of the principles laid down by the Supreme Court in **Chimanlal Hargovinddas v. Spl.Land Acquisition Officer, Poona** (AIR 1988 SC 1652), the reference court fixed the land value at the rate of Rs.2,500/- per cent. That the place has been chosen for the construction of a mini-civil station and subsequently for the KSRTC bus stand would show the importance of the locality and in such situation, the land value at the rate of Rs.2,500/- per cent even in 1988 cannot be said to be excess. In the nature of the evidence available on record regarding the importance of the locality, though the acquired land is wet land lying at a low level, we are of the view that the fixation thus made is only just, proper and reasonable.

2. The claimant has filed the Cross Objection claiming

a further enhancement of Rs.1,500/- per Are. As already noted by us above, except for the report of the Advocate Commissioner prepared after ten years of Section 4(1) notification, there is no other evidence on the part of the claimant. In that view of the matter, we do not think that the claimant is entitled for fixation of the land value by giving a further enhancement, though the learned counsel for the claimant made a vehement plea that as of now, the land value in that area is Rs.5 lakhs per cent. Being an acquisition of 1988, the claimant cannot reasonably expect to have anything more than Rs.2,500/- per cent as on that date. Thus, there is no merit in the Cross Objection. The appeal and the Cross Objection are dismissed, however, with a clarification that the claimant will be entitled to have all statutory benefits, including interest on solatium.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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KURIAN JOSEPH &

HARUN-UL-RASHID, JJ

L.A.A. NO.1139 OF 2002

J U D G M E N T

Dated 11th October, 2007.